IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4476 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION LTD.

Versus

F A SHAIKH

Appearance:

1. Special Civil Application No. 4476 of 2001

MR UI VYAS for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/07/2004

ORAL JUDGEMENT

1.0 The petitioner - Corporation by way of this petition has challenged the judgment and award dated

02/08/2000 passed by the Industrial Court, Mehsana in Reference (IT) No.304 of 1995, at Annexure-A to the petition, by which the penalty of withholding of six increments which was reduced to three increments with future effect, was quashed and set aside.

2.0 The brief facts of the case are as follows;

2.1 The respondent workman was employed in the petitioner Corporation as a Driver. It is the case of the petitioner that on 24/02/91 while the respondent workman was discharging his duties on Kadi - Mehsana route, the bus which he was driving met with an accident near Detroj Tolnaka. Due to the said accident, a cyclist suffered serious injuries and died during the course of medical treatment.

2.2 It is the case of the petitioner that pursuant to the same, the respondent was issued with show-cause notice and charge-sheet. Inquiry was initiated against the respondent. After the completion of inquiry, a penalty of withholding of six increments with future effect was imposed on the respondent workman.

2.3 Feeling aggrieved by the said order of the Inquiry Officer, the respondent preferred departmental appeal before the Appellate Authority. The Appellate Authority modified the quantum of punishment from six increments to three increments with future effect. Feeling dissatisfied by the order of the Appellate Authority, the respondent preferred application before the Industrial Court, Mehsana.

2.4 The Industrial Court, Mehsana, quashed the order passed by the Appellate Authority on the ground that the penalty was harsh and that the respondent was acquitted in the criminal proceedings which were initiated against him. Moreover, the department had not examined panch witnesses, namely, Lakshmiji Kanjibhai, Bhanuben Makaji and Kanubhai Narandas and witness Raisinghji Chanduji, who was an eye witness to the said incident, had stated that the respondent workman was driving the bus at a slow speed.

3.1 I have heard the learned advocates for the parties and have gone through the averments made in the petition. The Labour Court while passing the aforesaid order had lost sight of the fact that when the cyclist was killed in the accident, the presumption should be that there was negligence on the part of the respondent workman. The Court has committed an error by relying on

the acquittal order of the criminal Court. The burden of proof in the criminal Court is beyond doubt, whereas, in the departmental inquiry it is not so. Thus, in my view, the Labour Court has committed an error in quashing the penalty order, and therefore, it requires interference by this Court.

4.1 For the foregiong reasons, this petition is allowed. The judgment and award of the Industrial Court, Mehsana dated 02/08/2000 passed in Reference (IT) No.304 of 1995 at Annexure 'A' to the petition is quashed and set aside. The respondent workman is ordered to be imposed with a penalty of stoppage of five increments without future effect, in view of the fact that the petitioner has already retired from the service in 2001. This may not be treated as a precedent in other matters. It is directed that the petitioner Corporation will pay all the benefits to the respondent workman within a period of four months from the date of receipt of this order. Rule is made absolute accordingly with no orders as to costs.

(K. S. Jhaveri, J.)

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